THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.22199 of 2006

DATED 24.11.2006

Between:
Mohd.Khaza and another. PETITIONERS

Versus

Municipal Corporation of Hyderabad,
represented by its Commissioner,
Tank Bund, Hyderabad and another. RESPONDENTS

WRIT PETITION NO.22199 of 2006

ORDER:

This Court ordered Notice Before Admission on 26.10.2006 and Sri Ghanta Rama Rao had taken notice and requested time to file counter affidavit. Interim stay of demolition was granted for a limited period and the same is being extended from time to time.

2. The Writ Petition is filed for a Writ of Mandamus directing the respondents to act in accordance with law and forbear from demolishing any part of the malgies of the petitioners bearing Nos.17-6-362, 363, 364 and 366 of Dabeerpura, Hyderabad, without following procedure of law and without notifying the petitioners about the purported demolition to enable the petitioners to take appropriate legal remedies and pass such other suitable orders.

3. It is stated that the petitioners are the absolute owners and possessors of malgies bearing Nos.17-6-363 and 17-6-366 of Dabeerpura, Hyderabad, since they stand in their independent name. Apart from the said malgies, the petitioners are the joint owners of other malgies bearing Nos.17-6-362 and 364 of Dabeerpura, Hyderabad. It is stated that the 1st petitioner is carrying Flower business and pan shop whereas the 2nd petitioner is carrying retail

sale of plastic articles. It is also stated that in the shops jointly owned by them, the petitioners are conducting business in meat and to substantiate their plea that they are absolute owners of the said malgies, they are having link documents also. It is also stated in paragraph 3 of the affidavit that the respondent-Corporation had taken up road widening programme of the road which is located in front of the malgies of the petitioners which is connecting Purani Haveli to Darul Shifa. In that process of that road widening, there was a threat of demolition of the petitioners' malgies and hence they have filed Writ Petition No.13455 of 2004 before this Court and the said Writ Petition was disposed of by an order dated 4.8.2004 with the following direction:

> "The Writ Petition is filed seeking declaration that the action of the respondents in proposing to demolish the property is illegal and contrary to Sections 146 and 147 of Hyderabad Municipal Corporation Act, 1955. The respondents have filed counter affidavit categorically stating that they never attempted to demolish the structures without due process of law. The same is recorded and the Corporation is directed to proceed in accordance with law. The Writ Petition with the above observation is disposed of".

It is also stated that the petitioners filed another Writ Petition in W.P.No.5567 of 2003 with a prayer that the action of the Corporation in proposing to demolish the double storied building bearing Municipal No.17-6-361 to 368, Dabeerpura, Hyderabad, without settling their claims is arbitrary and the said Writ Petition was disposed of on 1.4.2003 with the following direction:

> "After getting instructions from concerned officials, learned standing counsel submitted that Municipal Corporation of Hyderabad has not taken any coercive steps for demolition of structure and that on 27.3.2003 or on 31.3.2003 and no official or squad of Municipal Corporation of Hyderabad went to the spot to demolish the building. The same is recorded. Needless to point

> out that unless Municipal Corporation of Hyderabad initiates action to acquire the land by agreement under Section 14 or by taking recourse to land acquisition proceedings under Section 147 of the Act, the petitioners cannot be deprived of their property forcibly nor their structure can be demolished. The Writ Petition with the above observations is dismissed at the admission stage".

It is also further stated subsequently there was a claim of the property of the petitioners as Government land as per the letter of the Mandal Revenue Officer, Charminar Mandal, dated 27.8.2004 which is addressed to the 2nd respondent, wherein it is mentioned that their premises are recorded as Government land in the Town Survey Land Register. At that stage, the petitioners had filed O.S.No.22 of 2005 on the file of the XIX Junior Civil Judge, City Civil Court, Hyderabad and in IA No.4 of 2005, the following order was passed on 20.12.2005:

> "In the result, the petition is disposed of with a direction that the respondents are restrained by way of granting temporary injunction by demolishing or dispossessing the petitioners from the suit schedule property without due process of law".

It is also stated that from all the proceedings referred above, it is crystal clear that the petitioners are the absolute owners of the said malgies and since there is proposal for acquisition of the malgies for the purpose of road widening, the respondents are required to follow the procedure of law contained in Sections 146 and 147 of Hyderabad Municipal Corporation Act, 1955. It is also further stated that the petitioners received a notice under Section 456 of the Act dated 16.10.2006 issued by the 1st respondent suggesting demolition of their malgies on the ground that they are dilapidated condition and required to be pull down. It is thus clear that the 1st respondent is trying to circumvent the order of this Court and avoid payment of compensation to the petitioners, notices under Section 456 of the Act were issued on the false ground that their malgies are dilapidated and in dangerous

condition and thus posing threat to the public at large. To the said notice, petitioners had submitted explanation dated 10.8.2006 denying the allegation that their malgies are in dilapidated and damaged condition and also stated that their malgies are strong enough to withstand for another 50 years to come. However, the 1st respondent had passed final order dated 17.8.2006 that the petitioners should remove the malgies within 3 days under Section 459 of the Act, failing which their malgies would be demolished by the Corporation. As against the final order, the petitioners filed an appeal before the Chief Judge, City Small Causes Court, in MA No.123 of 2006 and by the order dated 23.10.2006 the appellate authority under Section 607 of the Act had granted interim stay of demolition. When the petitioners went to the office of the 2nd respondent with the said order in IA No.941 of 2006 in MA No.123 of 2006 on 24.10.2006, the office of the 2nd respondent did not receive the order copy and the petitioners were orally told that their malgies would be high-handedly demolished on Friday i.e., on 27.10.2006. On hearing this, the petitioners became panicky and they were also directed to remove the articles from the malgies to avoid damage to the same. Thus, the petitioners have reasonable and genuine apprehension that the respondent-Corporation will resort to high-handed action of demolition of their malgies on 27.10.2006. It is further stated that the Corporation had not initiated any steps for acquisition of the malgies under Section 147 of the Hyderabad Municipal Corporation Act and in the face of the stay order granted by the appellate authority, the Corporation is high-handedly asserting that their malgies would be demolished on Friday. Under these circumstances, the petitioners are constrained to seek indulgence of this Court as the business from the said malgies is only source of their livelihood. Though the petitioners are pursuing legal remedies, the Corporation is threatening them with high-handed action

of demolition, which is totally arbitrary. The petitioners' suit and appeal before the appellate authority are still pending. No notice has been issued by the Corporation suggesting demolition on 27.10.2006. Insofar as the notices issued under Sections 456 and 459 of the Act are concerned, the petitioners have already filed appeal in MA No.123 of 2006 on the file of the Chief Judge, City Small Causes Court, Hyderabad, which is pending with an order of stay. Thus, the respondents are not justified in threatening and taking steps for demolition of the malgies of the petitioners. In such circumstances, the petitioners had approached this Court praying for the relief referred to supra.

4. As already specified above, the appeal before the Chief Judge, City Small Causes Court, Hyderabad is said to be pending and the appellate authority, it is stated, had granted interim stay. It is needless to say that the respondents herein are entitled to take appropriate steps for disposal of the pending matters. Even otherwise, the respondents are bound to follow due process of law before initiating further steps in relation to the malgies in question.

5. In the facts and circumstances, the Writ Petition is disposed of directing the respondents not to resort to the demolition activity relating to the subject matter of the Writ Petition unless and until due process of law is followed. No costs.

24.11.2006

SSR